

Department of Justice?

By Anthony Lewis

BOSTON, Feb. 19—Robert Sherrill, Washington correspondent of *The Nation* and a widely published freelance writer, has been trying for years to get a White House press pass. The Secret Service turned him down "for reasons of security," but it would not tell him the reasons.

In 1972 Mr. Sherrill sued. He won in the trial court, and again last December in the United States Court of Appeals in Washington. It held unanimously that he was entitled at least, under the Constitution, to a statement of the charges against him and a chance to answer.

The decision was no surprise. The courts have long since said that some process is due before government deprives someone of liberty or property as a security risk. The surprise is that Jimmy Carter's Department of Justice argued against that outcome. The Court of Appeals judges, evidently wondering, asked Department lawyers at the argument whether that really was the Administration position. It was, and now the lawyers are considering whether to take the case on to the Supreme Court.

The Sherrill case is not the only one in which the Carter Justice Department has been insensitive to Constitutional values—and, I think, to common sense. Consider a few other examples.

• The Kissinger Transcripts.

While in the White House, Henry Kissinger had aides secretly listen to his telephone calls and make notes. He took the transcripts when he left, claiming that they were private property. A suit brought under the Freedom of Information Act sought to see them as public records.

The Carter Justice Department resisted the suit. A brief signed by Barbara Babcock, Assistant Attorney General, made the astounding argument that papers removed from a government agency—even unlawfully removed—were no longer "agency records" subject to the F.O.I.A. Even if Mr. Kissinger had no right to take the transcripts, she said, the suit faced an "insurmountable obstacle." A judge rejected that view and found the transcripts public records subject to the Act.

• The Gag Order Cases.

The Supreme Court two years ago rejected the use of what the press calls gag orders: injunctions prohibiting pre-trial stories that might prejudice juries in criminal cases. But the Court left open the possibilities of orders forbidding comment by others, such as witnesses and lawyers.

The Carter Justice Department has pushed for such restrictive orders in civil cases—even though the cases

have little notoriety and are unlikely to go before a jury for years, if ever. In one case the Department persuaded a judge to forbid disclosure of unclassified documents about C.I.A. domestic spying: material of far greater public interest than the Supreme Court said the press could not be kept from publishing in criminal cases.

• The Snepp Lawsuit.

Last Tuesday Attorney General Griffin Bell disclosed his intention to sue Frank Snepp, a former C.I.A. employee, for failure to clear with the agency before publishing a book about Vietnam. Mr. Bell did so in casual—and, some lawyers thought highly unprofessional—answers at a press conference.

Major newspapers reported the press conference remarks. But they did not notice when the actual suit was filed the next day, in Federal Court in Alexandria, Va., and hence they did not report its novel and sweeping legal theories. The Department claims all of Mr. Snepp's royalties as damages for failing to submit the manuscript—even if his book contains no classified information.

The failure of the press and other observers to notice the repressive legal doctrines advanced by the Carter Justice Department in significant cases is curious. If John Mitchell or Richard Kleindienst had done precisely the same things, there would have been cries of alarm.

The press has been highly excited about the decision by President Carter and Mr. Bell to fire David Marston as United States Attorney in Philadelphia. But that affair seems to be just a case of crude and, as it happens, stupid politics: something far less serious than attempts to develop repressive new law. If the Carter Administration wins its suit against Frank Snepp, the First Amendment will bear the wound long after Mr. Marston is forgotten.

The puzzling question is why Griffin Bell and his assistants, many of them

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able and sympathetic lawyers, are making a record so disastrous in civil libertarian terms. I think their intentions are good. But intentions are useless if officials do not have the ability or the will to redirect the momentum of the bureaucracy.

Justice Department lawyers tend to act like other advocates, pushing every argument as far as it will go and doing whatever is necessary to win for the client. But it is the Attorney General's job to remind them who the client is. Over the door of his office are these words: "The United States wins its point whenever justice is done its citizens in the courts."